

Office of the Attorney General  
State of Tennessee

\*1 Opinion No. 85-114  
April 12, 1985

COUNTIES:

Commission/Commissioners/Legislative Bodies: Exemption of federal, state, and local government entities from the emergency communications district service charge. T.C.A. §§ 7-86-101 et seq., -108.

EMERGENCY:

Exemption of federal, state, and local government entities from the emergency communications district service charge. T.C.A. §§ 7-86-101 et seq. -108.

MUNICIPAL CORPORATIONS:

Fiscal Affairs: Municipal Powers: Exemption of federal, state, and local government entities from the emergency communications district service charge. T.C.A. §§ 7-86-101 et seq., -108.

TAXATION:

Use and Sales Tax: Applicability of the amusement tax to tanning beds and tanning salons; applicability of taxes other than the amusement tax to tanning beds and tanning salons. T.C.A. §§ 67-1-102, 67-6-212, 67-6-402; P.A. 1984, Ch. 13; Dept. Rev. Rules and Reg. 1320-5-1-1.16, 1320-5-1-1.23.

TELEPHONE:

Exemption of federal, state, and local government entities from the emergency communications district service charge. T.C.A. §§ 7-86-101 et seq., -108.

The Honorable Ray Albright  
Senator  
Room 317, War Memorial Building  
Nashville, Tennessee 37219

Dear Senator Albright:

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You have requested an opinion on the following question:

QUESTION

Should the Hamilton County Board of Commissions exempt federal, state, and local governmental entities from the service charge it has imposed pursuant to T.C.A. §§ 7-86-101 et. seq. to fund an emergency services number?

OPINION

Federal, state and county governmental entities are exempt from the Emergency Communications District service charge.

ANALYSIS

T.C.A. § 7-86-101 et. seq. is the Emergency Communications District Law. It was enacted to provide a single, three-digit number (911) to provide a simplified means of securing emergency services. The act permits the creations of a municipal corporation or district which would collect the necessary funds and contract with a service supplier who would furnish such an emergency communications service.

The board of directors of the district is authorized by T.C.A. § 7-86- 108(a) to assess a 'service charge' to fund the emergency telephone service. Such service charge 'shall have uniform application and shall be imposed throughout the entire district to the greatest extent possible in conformity with the availability of such service within the district.' T.C.A. § 7-86- 108(a). T.C.A. § 7-86-108(b) provides: 'Every billed user shall be liable for any service charge imposed under this chapter until it has been paid to the service supplier.' T.C.A. § 7-86-112 provides: 'If the proceeds generated by the emergency telephone service charge exceed the amount of moneys necessary to fund the service, the board of directors of the district shall reduce the service charge rate or suspend the service charge.'

\*2 The statute provides that this service charge 'shall not be construed as taxes.' T.C.A. § 7-86-106. This is in accord with the established rule that a 'tax' is imposed for a general or public purpose and for carrying on general government functions. *Obion County v. Massengill*, 177 Tenn. 477, 151 S.W.2d 156 (1941). In contrast, this service charge will be used only to pay for providing the 911 emergency service number.

A special assessment is not a tax but is assessed or levied for a special purpose on lands benefited. *Id*; *West Tenn. Flood Control and Soil Conservation District v. Wyatt*, 193 Tenn. 566, 247 S.W.2d 56 (1952). Federal agencies or instrumentalities are immune from special assessments by state and local governments. *United States v. Adair*, 539 F.2d 1185 (8th Cir. \_\_\_\_). The authority

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of a city or municipal corporation to make a special assessment on state or county property must be specially conferred by statute. *State v. Hamblen County*, 161 Tenn. 575, 33 S.W.2d 73 (1930); *City of Morristown v. Hamblen County*, 136 Tenn. 242, 188 S.W. 796 (1916).

This service charge is distinguishable from a special assessment since the service charge allowed under T.C.A. § 7-86-108 is levied upon telephone users while special assessments can be levied only upon land or real property. *Weakley County v. Odle*, 654 S.W.2d 402 (Tenn. App. 1983); *West Tennessee Flood Control*, supra. In addition, special assessments are generally used for improvements on the real property of the municipality which raise the value of the property specially assessed. *Obion County*, supra; 63 C.J.S. *Municipal Corporation* § 1035. Therefore, this 'service charge' is not a special assessment.

The charge in question here is simply a charge for the use of a service and is imposed only on those who will have access to the service. Clearly the Emergency Communications District Law empowers the municipal district to exercise its police power to establish a means of securing emergency services. The legislative purpose appears to be to protect public safety and health through the provision of such a service. The charge is only incidental to the provision of the service and is used only to pay the cost of the service. *Craig v. City of Macon*, 543 S.W. 2d 772 (Mo. 1976).

No matter what the nature of the fee involved, however, it is well settled in Tennessee that the state and its political subdivisions are not subject to a statute unless specifically mentioned therein or unless application thereto is necessarily implied. *Keeble v. City of Alcoa*, 204 Tenn. 286, 319 S.W.2d 249 (1959); *Davidson County v. Harmon*, 200 Tenn. 575, 292 S.W.2d 777 (1956); *Harrison Construction Co. v. Gibson County Board of Education*, 642 S.W. 2d 148 (Tenn. App. 1982). This Emergency Communications District Law is silent as to the sovereign and therefore the state and its subdivisions, including the county, are not subject to the law or to the fee involved. Similarly where the United States Congress does not affirmatively declare its instrumentalities or property subject to regulation, the federal function is immune from state regulation. *Hancock v. Train*, 426 U.S. 167, 96 S.Ct. 2006, 48 L.Ed. 2d 555 (1976); *Mayo v. United States*, 319 U.S. 441, 63 S.Ct. 1137, 87 L.Ed.2d 1504 (1943).

\*3 Federal, state, and county governmental entities should therefore be exempt from the Emergency Communications District service charge since there is no legislation specifically making them subject to the provisions of this law.

If you have any further comments or questions about this matter, do not hesitate to contact us.

Sincerely,

W. J. Michael Cody

Attorney General and Reporter

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WEST'S TENNESSEE CODE ANNOTATED  
TITLE 7. CONSOLIDATED GOVERNMENTS--GOVERNMENTAL AND PROPRIETARY FUNCTIONS  
**SPECIAL DISTRICTS**  
CHAPTER 86. EMERGENCY COMMUNICATIONS  
PART 1--EMERGENCY COMMUNICATIONS DISTRICTS  
§ 7-86-106. Status; powers; service charges

The emergency communications district so created shall be a "municipality" or public corporation in perpetuity under its corporate name, and the same shall in that name be a body politic and corporate with power of perpetual succession, but without any power to levy or collect taxes. Charges for services authorized herein shall not be construed as taxes and shall be payable as bona fide service charges by all service users, whether private or public, profit making, or not-for-profit, including governmental entities. The powers of each district shall be vested in and exercised by a majority of the members of the board of directors of the district.

1984 Pub.Acts, c. 867, § 6; 1987 Pub.Acts, c. 94, § 1.

<General Materials (GM) - References, Annotations, or Tables>

T. C. A. § 7-86-106, TN ST § 7-86-106

Current through End of 2003 First Reg. Sess.

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Ag. 8/24/03

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